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Regulatory  
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## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30-80-190
<b>Regulation title</b>	Methods and Standards for Establishing Payment Rates; Other Types of Care: State agency fee schedule for RBRVS
<b>Action title</b>	Recalibrate Physician Services; Implement Site of Service
<b>Date this document prepared</b>	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Preamble

*The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The Administrative Process Act (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a

regulation to take effect no later than 280 days from its effective date. This suggested emergency regulation meets the standard at COV 2.2-4011(B) as discussed below.

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled Methods and Standards for Establishing Payment Rates; Other Types of Care: State agency fee schedule for RBRVS (12 VAC 30-80-190) and also authorize the initiation of the promulgation process provided for in § 2.2-4007.

The Item 306.PP of the 2008 Appropriation Act directed recalibration of Resource Based Relative Value System (RBRVS) physician rates and implementation of site of service differentials. This regulation is intended to satisfy the mandate effective July 1, 2008.

### Legal basis

*Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

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This regulatory action is intended to implement reimbursement changes mandated by the Virginia General Assembly through the 2008 Appropriation Act to be effective July 1, 2008. Item 306.PP mandates recalibrating RBRVS physician rates and implementing site of service differentials.

### Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

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DMAS is promulgating this regulation pursuant to a state mandate, Item 306.PP of the 2008 Appropriation Act.

**Substance**

*Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.*

The section of the State Plan for Medical Assistance that is affected by this change is Methods and Standards for Establishing Payment Rates: Other Types of Care -- State agency fee schedule for RBRVS (12 VAC 30-80-190).

12 VAC 30-80-190 is being amended to implement a site of service differential for RBRVS physician rates. Payment for physician services in some cases will be recalibrated to implement different rates for services depending on the site of service, based on the relative value units (RVUs) for a procedure code published by the Centers for Medicare and Medicaid Services (CMS). For procedure codes that can be performed in either a facility or non-facility, CMS has been publishing separate RVUs for several years and Medicare rates are based on site of service.

Currently, DMAS uses only the non-facility RVU in calculating rates. Different Medicaid rates by site of service will be phased-in over a four-year period. In FY09, DMAS will add 75 percent of the difference between the facility RVU and non-facility RVU to the facility RVU. In FY10, DMAS will add 50 percent of the difference between the facility RVU and non-facility RVU to the facility RVU. In FY11, DMAS will add 25 percent of the difference between the facility RVU and non-facility RVU to the facility RVU. In subsequent fiscal years, DMAS will use the Medicare facility RVU.

Different rates based on site of service will be implemented in a budget neutral manner. Any savings in total reimbursement to physicians as a result of the implementation of site of service rates will be reallocated proportionately to all physician categories of service as a percentage increase. The annual RBRVS update to physician services will be performed in conjunction with the implementation of site of service.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-80-190		Defines the RBRVS rate setting methodology for professional fees	The language is modified to implement site of service differentials to pay both facility and non-facility rates to be transitioned over a four-year period.

## Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.*

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This regulatory action is based on the specific mandate language of the 2008 Appropriation Act, therefore, no alternatives were considered.

## Public participation

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments on this notice.*

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The agency/board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to William J. Lessard, Jr., Director of Provider Reimbursement, 804-225-4593 voice, 804-371-8892 fax, [william.lessard@dmas.virginia.gov](mailto:william.lessard@dmas.virginia.gov)

Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

## Participatory approach

*Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

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DMAS used the participatory approach to develop this proposal. The Agency previously held a series of meetings with affected provider groups and associations in order to develop the substance of these regulations.

### Family impact

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.